



UNITED NATIONS
NATIONS UNIES

**Tribunal pénal international pour le Rwanda
International Criminal Tribunal for Rwanda**

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Andrézia Vaz
Judge Theodor Meron

Registrar: Mr. Adama Dieng

Decision of: 03 May 2007

**Ferdinand NAHIMANA
Jean-Bosco BARAYAGWIZA
Hassan NGEZE
(Appellants)**

v.

**THE PROSECUTOR
(Respondent)**

Case No. ICTR-99-52-A

**DECISION ON APPELLANT JEAN-BOSCO BARAYAGWIZA'S MOTION FOR
EXTENSION OF TIME**

Counsel for Jean-Bosco Barayagwiza

Mr. D. Peter Herbert
Ms. Tanoo Mylvaganam

Counsel for Ferdinand Nahimana

Mr. Jean-Marie Biju-Duval
Ms. Diana Ellis

Counsel for Hassan Ngeze

Mr. Bharat B. Chadha
Mr. Dev Nath Kapoor

Office of the Prosecutor

Mr. James Stewart
Mr. Neville Weston
Mr. George Mugwanya
Ms. Linda Bianchi
Mr. Abdoulaye Seye
Mr. Alfred Orono Orono

THE APPEALS CHAMBER of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 (“Appeals Chamber” and “Tribunal”, respectively),

BEING SEIZED OF “The Appellant Jean-Bosco Barayagwiza’s Extremely Urgent Motion for Leave to Permit Extra Time to File Written Submissions in Response to the Forensic Experts [*sic*] Report Filed on 19th April 2007 Pursuant to the Order of the Appeal Court” (“Motion”) filed by Counsel for Jean-Bosco Barayagwiza (“Appellant”) on 30 April 2007;

NOTING that the Prosecution has not yet filed a response;

CONSIDERING, however, that the time limit at issue will soon expire, namely on 3 May 2007, and that the Motion therefore may be disposed of without giving the Prosecution further time to respond;¹

RECALLING its Order Appointing a Handwriting Expert issued on 7 February 2007 (“7 February 2007 Order”), in which the Appeals Chamber allowed the parties, “should they wish to do so, to present written submissions of no more than 20 pages, with no right of response, in connection with the conclusions of the Handwriting Expert’s Report and their impact on the verdict, no later than fifteen days after the communication of the said Report”;²

NOTING that the confidential report on “Examination of Handwriting and Signatures of Witness EB” dated 3 April 2007 was communicated by the Registry to the parties on 18 April 2007 (“Expert’s Report”);³

CONSIDERING that, in accordance with the 7 February 2007 Order, the Appellant’s submissions in connection with the conclusions of the Expert’s Report are due to be filed by 3 May 2007;

¹ Cf. Decision on Hassan Ngeze’s Request for a Status Conference, 13 December 2006, p. 2; Decision on the Prosecutor’s Motion to Be Relieved from Filing the Appeal Book and Books of Authorities, 27 November 2006, p. 2; *Sylvestre Gacumbitsi v. The Prosecutor*, Case No. ICTR-01-64-A, Decision on the Appellant’s Motion of 8 December 2005, 16 December 2005, para. 2. The Appeals Chamber also notes that the “Prosecutor’s Submissions Following the Rule 115 Evidentiary Hearing Pertaining to the Alleged Recantation of Witness EB’s Trial Testimony” were filed on 30 April 2007 and that, pursuant to the 7 February 2007 Order, the parties have no right of response on this matter.

² 7 February 2007 Order, p. 4 (footnotes omitted). See also, Order Extending the Scope of the Examination by the Handwriting Expert Appointed by Order of 7 February 2007, 21 February 2007, p. 4 and Second Order Extending the Scope of the Examination by the Handwriting Expert Appointed by Order of 7 February 2007, 27 March 2007 (“27 March 2007 Order”), p. 4.

³ The Appeals Chamber notes that the facsimilé transmission containing the Expert’s Report was sent to the Appellant’s Counsel in London on 18 April 2007 at 15:14 (Central European Time).

NOTING, however, that the Appellant was served with a copy of the Expert's Report on 23 April 2007;

NOTING that, in the Motion, the Appellant requests an extension of time of five days (to 9 May 2007) for the filing of his submissions and avers that his Lead Counsel only received a copy of the Expert's Report on 24 April 2007 "when he returned from a trip abroad and telephoned the Appellant on April 25th to take his instructions";⁴

NOTING that the Appellant consequently argues that the time allotted for filing of submissions in relation to the Expert's Report "should not begin to run until [23 April 2007]";⁵

CONSIDERING that pursuant to Rule 116(A) of the Rules of Procedure and Evidence of the Tribunal ("Rules"), the Appeals Chamber may, upon showing of good cause, grant a motion for extension of a prescribed time limit;

RECALLING that "a Counsel, when accepting assignment as Lead Counsel in a case before the Tribunal, is under an obligation to give absolute priority to observe the time limits as foreseen in the Rules";⁶

CONSIDERING that the fact that the Appellant's Lead Counsel was on "a trip abroad" does not constitute good cause for the extension of the time limit prescribed by the 7 February 2007 Order;⁷

NOTING, however, that the Appellant submits that "the impact of the Expert[']s Report taken together with the various matters as to the credibility of witness EB as well as that the linked witness AFX" may be crucial for his case;⁸

CONSIDERING the lateness of the Motion and, consequently, the date of the present Decision;

CONSIDERING that no prejudice will be caused to the other parties in this case if this Motion is granted;

⁴ Motion, para. 2 and p. 3. The Appellant also refers to problems with "fax communications" with the United Nations Detention Facility in Arusha (*ibid.*, para. 3), but the Appeals Chamber does not consider these submissions relevant to the instant circumstances.

⁵ Motion, para. 4.

⁶ Decision on Appellant Jean-Bosco Barayagwiza's Motion for Leave to Present Additional Evidence Pursuant to Rule 115, 5 May 2005, para. 26 *citing* Decision on Clarification of Time Limits and on Appellant Barayagwiza's Extremely Urgent Motion for Extension of Time to File his Notice of Appeal and his Appellant's Brief, 2 September 2005, p. 5.

⁷ In addition, the Appeals Chamber recalls that the 27 March 2007 Order, as well as the previous order on this matter (*see* footnote 2 *supra*) announced the imminent filing of the Expert's Report: "Orders [...] to complete his report and disclose the said written report to the Appeals Chamber as soon as practicable and no later than three days after the receipt of the original of Document E" (p. 4).

⁸ Motion, paras 3 and 5.

FINDING, that it is in the interests of justice to allow the requested extension of time in order to give the Appellant an opportunity to present meaningful submissions on the said matter;

FOR THE FOREGOING REASONS,

GRANTS the Motion and **ORDERS** the Appellant to file his submissions in connection with the conclusions of the Expert's Report no later than 8 May 2007.

Done in English and French, the English version being authoritative.

Done this 3rd day of May 2007,
At The Hague, The Netherlands.

Fausto Pocar
Presiding Judge

[Seal of the Tribunal]